

1. The Declaration of Louis Brucculeri, the attorney for Applicant, with whom Mr. Gunawardena has been in contact. The Declaration shows the following:
 - (A) A bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to Mr. Gunawardena.
 - (B) Mr. Gunawardena actually received a copy of the application papers (specification, including claims, drawings, and oath or declaration).
 - (C) Mr. Gunawardena refused to join the application.
 - (D) Mr. Gunawardena refused to sign the declaration.
2. Mr. Gunawardena's Employment Agreement with Applicant, calls for his cooperation.
3. All other inventors of the subject application have signed the declaration.
4. Attorney for applicant has spoken to Mr. Gunawardena on several occasions to solicit his participation in the application process.
5. Applicant corresponded with Mr. Gunawardena at the following address, phone number and email address. These are Mr. Gunawardena's last known address and phone number.

827 Newport Circle
Redwood Shores, CA 94065
650-594-1360
dilip_gunawardena@yahoo.com

Argument

Dilip Gunawardena is Applicant's ex-employee and a person that Applicant believes is an inventor of the subject application. Over a five-week period, Applicant has attempted to solicit cooperation from Mr. Gunawardena regarding the subject application. During this period, Applicant's representative has spoken by phone with Mr. Gunawardena several times, written three letters to Mr. Gunawardena and sent several emails. Brucculeri Declaration Paragraphs 4 – 5. Other than during phone conversations, Mr. Gunawardena has refused to respond substantively. For example, all the emails sent by Mr. Gunawardena are limited to requests for phone calls and associated phone call scheduling. Brucculeri Declaration, Paragraph 5,

Mr. Gunawardena's failure to cooperate is in direct contravention to his employment agreement with Applicant, wherein Mr. Gunawardena assigns his rights to the subject invention and agrees to post-employment cooperation. Brucculeri Declaration, Paragraph 7. Notwithstanding this agreement, Mr. Gunawardena has unequivocally conveyed that he will not cooperate with prosecution of the subject application unless Applicant pays him \$250,000.00 over a two-year period. Brucculeri Declaration, Paragraphs 8 through 15. In furtherance of his refusal to sign or cooperate, Mr. Gunawardena has conveyed that, unless he is so compensated, he will take legal action to prevent the issuance of a valid patent to Applicant. Brucculeri Declaration, Paragraph 8. In addition, Mr. Gunawardena has conveyed that his \$250,000.00 offer is not negotiable and that after May 31, 2002 there would be no further opportunities for discussion. Brucculeri Declaration, Paragraph 9.

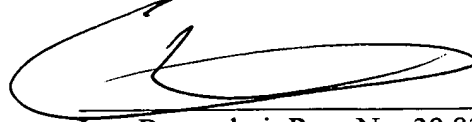
In a generous gesture of cooperation, Applicant has offered to compensate Mr. Gunawardena for reading the application and signing the declaration (if appropriate). Applicant offered up to \$200 per hour to a maximum of \$2000. Brucculeri Declaration, Paragraph 11. Mr. Gunawardena refused this offer. Brucculeri Declaration, Paragraph 12.

Through this submission including the Brucculeri Declaration, Applicant has shown that a copy of the subject application (along with declaration and assignment forms) were sent to Mr. Gunawardena and received by him. Applicant has further shown, that Mr. Gunawardena has refused to cooperate in any way, including by joining the application or signing the Rule 1.63 declaration. Given Mr. Gunawardena's statements and course of conduct, Applicant has shown that Mr. Gunawardena will not cooperate now or in the future unless given extortive compensation. Lastly, Applicant has provided Mr. Gunawardena's contact information.

Therefore, Applicant has met the requirements of 37 CFR 1.47, with respect to Mr. Gunawardena's refusal to join the application and Applicant respectfully requests approval of this petition.

A check for the fee of \$130.00 is enclosed. Any shortage or overage may be deducted or credited from deposit account 501922.

Respectfully submitted,




Lou Brucculeri, Reg. No. 38,834

5/28/02

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CERTIFICATE OF MAILING UNDER 1.8

I hereby certify that this document is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to Commissioner of Patents, Washington, D.C. 20231 on May 28, 2002.



Kay Clayenna, PLS